IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8039 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE CIVIL SUPPLIES CORPN LTD

Versus

RAMESHBHAI BALASHANKAR BHATT C/O HASUBHAI DAVE

Appearance:

1. Special Civil Application No. 8039 of 2000

MR DEEPAK V PATEL for Petitioner No. 1

MR SUNIL C PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. This petition is filed by the Gujarat State Civil Supplies Corporation Limited against the judgment & award

of the Labour Court, Amreli dated 23-3-2000 in Reference (LCA) No. 54/98.

2.1 The case of the petitioner is that the petitioner is a wholly owned Government company incorporated under the Companies Act, 1956 for the purpose of undertaking supply of food grains and other essential commodities through public distribution system to the villages situated in the rural and interior part of the State of Gujarat. For the public distribution work, petitioner is having its godown in different districts of the State and one of the godown is situated at village Kodinar.

2.2 The submission of the petitioner further is that the respondent workman was appointed as Watchman on 29 days basis purely on temporary basis vide order dated 25-6-1982 at Kodinar godown. Said appointment was made due to exigency of work arisen. After completion of 29 days respondent was agins issued appointment order dated 25-12-1982 for the period 27-12-1982 upto 24-1-1983, i.e. for 29 days. Respondent workman was appointed on temporary post of Hamal-cum-Sweeper vide letter dated 2-5-1983 for 29 days. Such 4 orders were issued and the last order was issued on 8-8-1983 for the period 1-8-1983 to 29-8-1983. It is the say of the petitioner that all the temporary appointment orders were issued for 29 days, meaning thereby on completion of last day, the service of the respondent came to an end and fresh temporary appointment was given to the respondent. It is submitted that after 1-9-1983 no appointment order was issued to the respondent and respondent's service came to an end on completion of 29 days on 29-8-1983. No termination order was issued to the respondent and the respondent's service came to an end by afflux of time.

3.1 Mr. D.V. Patel, learned advocate for the petitioner Corporation has submitted that since the respondent was appointed on contractual basis for 29 days petitioner Corporation was not required to follow procedure of section 25-F of the I.D. Act, therefore the Labour Court has committed an error in granting reinstatement on the basis of non observation of section 25-F of the Act and has also committed error in granting backwages from 31-7-1987 in as much as the respondent workman approached the Labour Court almost after 5 years from the date of his alleged termination.

3.2 Mr. Patel for the petitioner Corporation has further submitted that the petitioner has voluntarily not resumed duty, therefore petitioner Corporation is not required to follow provisions of section 25-F of the I.D.

Act.

4.1 On the other hand Mr. Sunil C. Patel, learned advocate for the respondent has contended that the respondent was given break in service after 29 days service only with a view to avoid regular salary and other service benefits but his service was continuous during the period, therefore the Labour Court was right in granting backwages for breach of section 25-F of the I.D. Act.

4.2 Mr. Sunil Patel for the respondent also contended that the petitioner Corporation has committed breach of section 25-H as the respondent workman was never called upon for duty when other persons were appointed subsequent to the petitioner. Therefore the order of reinstatement with continuity of service atleast from he date of approaching Labour Court is required to be confirmed.

5.1 I have heard learned advocate Mr. D.V. Patel for the petitioner Corporation and learned advocate Mr. Sunil C. Patel for respondent workman.

5.2 After considering the evidence on record and the order of the Labour Court, it is true in view of the appointments on contractual basis for 29 days the case of the respondent would fall under section 2 (oo) (bb) of the I.D. Act, therefore the petitioner Corporation may not be required to follow section 25-F of the Act. This will come out of the term of retrenchment and therefore consequential order of backwages is required to be quashed.

5.3 The argument of non observance of section 25-H is without any basis in view of the fact that it is the duty of the employer that as & when the work is available to call the workman who is retrenched and the same fact is establishment from the record. Mr. D.V. Patel is not in a position to establish that the petitioner Corporation followed provisions of section 25-H of the Act. In this view of the matter and considering the earlier service rendered by the respondent workman, the order of the Labour Court is required to be confirmed qua reinstatement with continuity of service from the date on which the respondent workman approached the Labour Court.

6.1 In the result the petition is partly allowed. The order of the Labour Court qua backwages is quashed and set aside. However, order of the Labour Court in respect of reinstatement of the respondent with

continuity of service from the date of his approaching the Labour Court is confirmed.

6.2 The petitioner Corporation is directed to reinstate the respondent in his original position as directed by the Labour Court within one month from the date of receipt of writ of this order and the respondent will be paid his salary or the emoluments which he is entitled under the Labour Court order. Ad interim relief dated 24-7-2000, staying the Labour Court order dated 23-3-2000 stands vacated . Rule made absolute to the aforesaid extent. No order as to costs.

Dt: 26-8-2004 (K.S. JHAVERI, J)

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